

Senate Bill No. 341

Passed the Senate August 30, 2013

Secretary of the Senate

Passed the Assembly August 22, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 34176 of, and to add Section 34176.1 to, the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

SB 341, DeSaulnier. Redevelopment.

(1) Existing law dissolved redevelopment agencies and community development agencies, and provides for the designation of successor agencies that are required to wind down the affairs of the dissolved redevelopment agencies and to, among other things, make payments due for enforceable obligations, as defined. Existing law provides that the city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. Existing law requires the entity assuming the housing functions of the former redevelopment agency to perform various functions.

This bill would change provisions relating to the functions to be performed by the entity assuming the housing functions of the former redevelopment agency to instead refer to the housing successor.

(2) Existing law provides that any funds transferred to the city, county, or city and county or the entity assuming the housing functions of the former redevelopment agency, together with any funds generated from housing assets, shall be maintained in a separate Low and Moderate Income Housing Asset Fund which shall be used in accordance with applicable housing-related provisions of the Community Redevelopment Law, as specified.

This bill would provide that funds in the Low and Moderate Income Housing Asset Fund shall be used in accordance with applicable housing-related provisions of the Community Redevelopment Law, except as specified. The bill would require the housing successor to expend funds in the Low and Moderate Income Housing Asset Fund, other than those expended to meet enforceable obligations, for the purpose of monitoring and preserving the long-term affordability of units subject to affordability restrictions or covenants entered into by the

redevelopment agency or the housing successor, for homeless prevention and rapid rehousing services to individuals and families who are homeless or would be homeless but for this assistance, and for the development of affordable housing, as specified.

(3) Existing law requires that moneys in the Low and Moderate Income Housing Fund be used to assist housing for persons of low income and housing for persons of very low income in at least the same proportion as the total number of housing units needed for each of those income groups bears to the total number of units needed for persons of moderate, low, and very low income within the community, as specified.

This bill would provide that these provisions shall not apply, and would instead require that if the aggregate number of units of deed-restricted rental housing restricted to seniors and assisted by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years exceeds 50% of the aggregate number of units of deed-restricted rental housing assisted by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period, then the housing successor shall not expend these funds to assist additional senior housing units until the housing successor or its host jurisdiction assists, and construction has started on, a number of units available to all persons regardless of age that is equal to 50% of the aggregate number of units of deed-restricted rental housing units assisted by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period.

(4) Existing law requires that a specified percentage of all taxes that are allocated to a former redevelopment agency be used outside a specified project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project.

This bill would provide that program income a housing successor receives shall not be associated with a project area and may be expended anywhere within the jurisdiction of the housing successor or transferred for the purpose of developing transit priority projects, permanent supportive housing, housing for agricultural employees, or special needs housing, without a finding of benefit to a project area, as specified. The bill would also authorize 2 or more housing successors, as specified, to agree to transfer funds among their respective Low and Moderate Income Housing Asset Funds, as specified.

(5) Existing law provides that if excess surplus accumulates in the Low and Moderate Income Housing Fund, the former redevelopment agency may adopt a plan for expenditure of the moneys. Existing law also requires that upon failure of the former redevelopment agency to expend or encumber excess surplus in the Low and Moderate Income Housing Fund, it shall be required to disburse, expend, or encumber its excess surplus, as specified.

This bill would provide that these provisions shall not apply, and would instead provide that if a housing successor has an excess surplus, the housing successor shall encumber the excess surplus for specified purposes or transfer the funds within 3 fiscal years. The bill would provide that if the housing successor fails to comply with this subdivision, the housing successor, within 90 days of the end of the 3rd fiscal year, shall transfer any excess surplus to the Department of Housing and Community Development for expenditure pursuant to the Multifamily Housing Program or the Joe Serna, Jr. Farmworker Housing Grant Program.

(6) Existing law requires a former redevelopment agency, for each interest in real property acquired using moneys from the Low and Moderate Income Housing Fund, to, within 5 years from the date it first acquires the property interest for the development of housing affordable to persons and families of low and moderate income, initiate activities consistent with the development of the property for that purpose. Existing law provides that in the event that physical development of the property for this purpose has not begun by the end of a specified time period, or if the former redevelopment agency does not comply with this requirement, the property shall be sold and the moneys from the sale, less reimbursement to the agency for the cost of the sale, shall be deposited in the Low and Moderate Income Housing Fund.

This bill would provide that these provisions shall not apply to interests in real property acquired on or after February 1, 2012, and that with respect to interests in real property acquired by the former redevelopment agency prior to February 1, 2012, the specified time periods shall be deemed to have commenced on the date that the Department of Finance approved the property as a housing asset.

(7) Existing law requires every former redevelopment agency to submit the final report of any audit undertaken and an annual report to its legislative body, as specified. Existing law also requires

the Controller to compile and publish annually reports of the financial transactions of each former community redevelopment agency, to make the data available to the Legislature and its agents upon request, and to publish this information for each project area of each redevelopment agency.

This bill would provide that these provisions shall not apply and, instead, would require the housing successor to conduct and provide to its governing body an independent financial audit of the Low and Moderate Income Housing Asset Fund. It would also require the housing successor to post specified information on its Internet Web site.

The people of the State of California do enact as follows:

SECTION 1. Section 34176 of the Health and Safety Code is amended to read:

34176. (a) (1) The city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a redevelopment agency, all rights, powers, duties, obligations, and housing assets, as defined in subdivision (e), excluding any amounts on deposit in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county.

(2) The housing successor shall submit to the Department of Finance by August 1, 2012, a list of all housing assets that contains an explanation of how the assets meet the criteria specified in subdivision (e). The Department of Finance shall prescribe the format for the submission of the list. The list shall include assets transferred between February 1, 2012, and the date upon which the list is created. The department shall have up to 30 days from the date of receipt of the list to object to any of the assets or transfers of assets identified on the list. If the Department of Finance objects to assets on the list, the housing successor may request a meet and confer process within five business days of receiving the department objection. If the transferred asset is deemed not to be a housing asset as defined in subdivision (e), it

shall be returned to the successor agency and the provision of Section 34178.8 may apply. If a housing asset has been previously pledged to pay for bonded indebtedness, the successor agency shall maintain control of the asset in order to pay for the bond debt.

(3) For purposes of this section and Section 34176.1, “housing successor” means the entity assuming the housing function of a former redevelopment agency pursuant to this section.

(b) If a city, county, or city and county does not elect to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, duties, and obligations associated with the housing activities of the agency, excluding enforceable obligations retained by the successor agency and any amounts in the Low and Moderate Income Housing Fund, shall be transferred as follows:

(1) If there is no local housing authority in the territorial jurisdiction of the former redevelopment agency, to the Department of Housing and Community Development.

(2) If there is one local housing authority in the territorial jurisdiction of the former redevelopment agency, to that local housing authority.

(3) If there is more than one local housing authority in the territorial jurisdiction of the former redevelopment agency, to the local housing authority selected by the city, county, or city and county that authorized the creation of the redevelopment agency.

(c) Commencing on the operative date of this part, the housing successor may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)), including, but not limited to, Section 33418.

(d) Except as specifically provided in Section 34191.4, any funds transferred to the housing successor, together with any funds generated from housing assets, as defined in subdivision (e), shall be maintained in a separate Low and Moderate Income Housing Asset Fund which is hereby created in the accounts of the housing successor.

(e) For purposes of this part, “housing asset” includes all of the following:

(1) Any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences, including furniture and appliances, all

housing-related files and loan documents, office supplies, software licenses, and mapping programs, that were acquired for low- and moderate-income housing purposes, either by purchase or through a loan, in whole or in part, with any source of funds.

(2) Any funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing, as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000)) unless required in the bond covenants to be used for repayment purposes of the bond.

(3) Any loan or grant receivable, funded from the Low and Moderate Income Housing Fund, from homebuyers, homeowners, nonprofit or for-profit developers, and other parties that require occupancy by persons of low or moderate income as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(4) Any funds derived from rents or operation of properties acquired for low- and moderate-income housing purposes by other parties that were financed with any source of funds, including residual receipt payments from developers, conditional grant repayments, cost savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

(5) A stream of rents or other payments from housing tenants or operators of low- and moderate-income housing financed with any source of funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low- and moderate-income housing.

(6) (A) Repayments of loans or deferrals owed to the Low and Moderate Income Housing Fund pursuant to subparagraph (G) of paragraph (1) of subdivision (d) of Section 34171, which shall be used consistent with the affordable housing requirements in the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(B) Loan or deferral repayments shall not be made prior to the 2013–14 fiscal year. Beginning in the 2013–14 fiscal year, the maximum repayment amount authorized each fiscal year for repayments made pursuant to this paragraph and subdivision (b) of Section 34191.4 combined shall be equal to one-half of the increase between the amount distributed to taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 in that fiscal

year and the amount distributed to taxing entities pursuant to that paragraph in the 2012–13 base year. Loan or deferral repayments made pursuant to this paragraph shall take priority over amounts to be repaid pursuant to subdivision (b) of Section 34191.4.

(f) If a development includes both low- and moderate-income housing that meets the definition of a housing asset under subdivision (e) and other types of property use, including, but not limited to, commercial use, governmental use, open space, and parks, the oversight board shall consider the overall value to the community as well as the benefit to taxing entities of keeping the entire development intact or dividing the title and control over the property between the housing successor and the successor agency or other public or private agencies. The disposition of those assets may be accomplished by a revenue-sharing arrangement as approved by the oversight board on behalf of the affected taxing entities.

(g) (1) (A) The housing successor may designate the use of and commit indebtedness obligation proceeds that remain after the satisfaction of enforceable obligations that have been approved in a Recognized Obligation Payment Schedule and that are consistent with the indebtedness obligation covenants. The proceeds shall be derived from indebtedness obligations that were issued for the purposes of affordable housing prior to January 1, 2011, and were backed by the Low and Moderate Income Housing Fund. Enforceable obligations may be satisfied by the creation of reserves for the projects that are the subject of the enforceable obligation that are consistent with the contractual obligations for those projects, or by expending funds to complete the projects.

(B) The housing successor shall provide notice to the successor agency of any designations of use or commitments of funds specified in subparagraph (A) that it wishes to make at least 20 days before the deadline for submission of the Recognized Obligation Payment Schedule to the oversight board. Commitments and designations shall not be valid and binding on any party until they are included in an approved and valid Recognized Obligation Payment Schedule. The review of these designations and commitments by the successor agency, oversight board, and Department of Finance shall be limited to a determination that the designations and commitments are consistent with bond covenants and that there are sufficient funds available.

(2) Funds shall be used and committed in a manner consistent with the purposes of the Low and Moderate Income Housing Asset Fund. Notwithstanding any other law, the successor agency shall retain and expend the excess housing obligation proceeds at the discretion of the housing successor, provided that the successor agency ensures that the proceeds are expended in a manner consistent with the indebtedness obligation covenants and with any requirements relating to the tax status of those obligations. The amount expended shall not exceed the amount of indebtedness obligation proceeds available and such expenditure shall constitute the creation of excess housing proceeds expenditures to be paid from the excess proceeds. Excess housing proceeds expenditures shall be listed separately on the Recognized Obligation Payment Schedule submitted by the successor agency.

(h) This section shall not be construed to provide any stream of tax increment financing.

SEC. 2. Section 34176.1 is added to the Health and Safety Code, to read:

34176.1. Funds in the Low and Moderate Income Housing Asset Fund described in subdivision (d) of Section 34176 shall be subject to the provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) relating to the Low and Moderate Income Housing Fund, except as follows:

(a) Subdivision (d) of Section 33334.3 and subdivision (a) of Section 33334.4 shall not apply. Instead, funds received from the successor agency for items listed on the Recognized Obligation Payment Schedule shall be expended to meet the enforceable obligations, and the housing successor shall expend all other funds in the Low and Moderate Income Housing Asset Fund as follows:

(1) For the purpose of monitoring and preserving the long-term affordability of units subject to affordability restrictions or covenants entered into by the redevelopment agency or the housing successor and for the purpose of administering the activities described in paragraphs (2) and (3), a housing successor may expend per fiscal year up to an amount equal to 2 percent of the statutory value of real property owned by the housing successor and of loans and grants receivable, including real property and loans and grants transferred to the housing successor pursuant to Section 34176 and real property purchased and loans and grants made by the housing successor. If this amount is less than two

hundred thousand dollars (\$200,000) for any given fiscal year, the housing successor may expend up to two hundred thousand dollars (\$200,000) in that fiscal year for these purposes. The Department of Housing and Community Development shall annually publish on its Internet Web site an adjustment to this amount to reflect any change in the Consumer Price Index for All Urban Consumers published by the federal Department of Labor for the preceding calendar year. For purposes of this paragraph, “statutory value of real property” means the value of properties formerly held by the former redevelopment agency as listed on the housing asset transfer form approved by the Department of Finance pursuant to paragraph (2) of subdivision (a) of Section 34176, the value of the properties transferred to the housing successor pursuant to subdivision (f) of Section 34181, and the purchase price of properties purchased by the housing successor.

(2) Notwithstanding Section 33334.2, if the housing successor has fulfilled all obligations pursuant to Sections 33413 and 33418, the housing successor may expend up to two hundred fifty thousand dollars (\$250,000) per fiscal year for homeless prevention and rapid rehousing services for individuals and families who are homeless or would be homeless but for this assistance, including the provision of short-term or medium-term rental assistance, housing relocation and stabilization services including housing search, mediation, or outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, moving cost assistance, and case management, or other appropriate activities for homelessness prevention and rapid rehousing of persons who have become homeless.

(3) (A) The housing successor shall expend all funds remaining in the Low and Moderate Income Housing Asset Fund after the expenditures allowed pursuant to paragraphs (1) and (2) for the development of housing affordable to and occupied by households earning 80 percent or less of the area median income, with at least 30 percent of these remaining funds expended for the development of rental housing affordable to and occupied by households earning 30 percent or less of the area median income and no more than 20 percent of these remaining funds expended for the development of housing affordable to and occupied by households earning between 60 percent and 80 percent of the area median income. A

housing successor shall demonstrate in the annual report described in subdivision (f), for 2019, and every five years thereafter, that the housing successor's expenditures from January 1, 2014, through the end of the latest fiscal year covered in the report comply with the requirements of this subparagraph.

(B) If the housing successor fails to comply with the extremely low income requirement in any five-year report, then the housing successor shall ensure that at least 50 percent of these remaining funds expended in each fiscal year following the latest fiscal year following the report are expended for the development of rental housing affordable to, and occupied by, households earning 30 percent or less of the area median income until the housing successor demonstrates compliance with the extremely low income requirement in an annual report described in subdivision (f).

(C) If the housing successor exceeds the expenditure limit for households earning between 60 percent and 80 percent of the area median income in any five-year report, the housing successor shall not expend any of the remaining funds for households earning between 60 percent and 80 percent of the area median income until the housing successor demonstrates compliance with this limit in an annual report described in subdivision (f).

(D) For purposes of this subdivision, "development" means new construction, acquisition and rehabilitation, substantial rehabilitation as defined in Section 33413, the acquisition of long-term affordability covenants on multifamily units as described in Section 33413, or the preservation of an assisted housing development that is eligible for prepayment or termination or for which within the expiration of rental restrictions is scheduled to occur within five years as those terms are defined in Section 65863.10 of the Government Code. Units described in this subparagraph may be counted towards any outstanding obligations pursuant to Section 33413, provided that the units meet the requirements of that section and are counted as provided in that section.

(b) Subdivision (b) of Section 33334.4 shall not apply. Instead, if the aggregate number of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years exceeds 50 percent of the aggregate number of units of deed-restricted rental housing assisted

individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period, then the housing successor shall not expend these funds to assist additional senior housing units until the housing successor or its host jurisdiction assists, and construction has commenced, a number of units available to all persons, regardless of age, that is equal to 50 percent of the aggregate number of units of deed-restricted rental housing units assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the time period described above.

(c) (1) Program income a housing successor receives shall not be associated with a project area and, notwithstanding subdivision (g) of Section 33334.2, may be expended anywhere within the jurisdiction of the housing successor or transferred pursuant to paragraph (2) without a finding of benefit to a project area. For purposes of this paragraph, “program income” means the sources described in paragraphs (3), (4), and (5) of subdivision (e) of Section 34176 and interest earned on deposits in the account.

(2) Two or more housing successors within a county, within a single metropolitan statistical area, within 15 miles of each other, or that are in contiguous jurisdictions may enter into an agreement to transfer funds among their respective Low and Moderate Income Housing Asset Funds for the sole purpose of developing transit priority projects as defined in subdivisions (a) and (b) of Section 21155 of the Public Resources Code, permanent supportive housing as defined in paragraph (2) of subdivision (b) of Section 50675.14, housing for agricultural employees as defined in subdivision (g) of Section 50517.5, or special needs housing as defined in federal or state law or regulation if all of the following conditions are met:

(A) Each participating housing successor has made a finding based on substantial evidence, after a public hearing, that the agreement to transfer funds will not cause or exacerbate racial, ethnic, or economic segregation.

(B) The development to be funded shall not be located in a census tract where more than 50 percent of its population is very low income, unless the development is within one-half mile of a major transit stop or high-quality transit corridor as defined in paragraph (3) of subdivision (b) of Section 21155 of the Public Resources Code.

(C) The completed development shall not result in a reduction in the number of housing units or a reduction in the affordability of housing units on the site where the development is to be built.

(D) A transferring housing successor shall not have any outstanding obligations pursuant to Section 33413.

(E) No housing successor may transfer more than one million dollars (\$1,000,000) per fiscal year.

(F) The jurisdictions of the transferring and receiving housing successors each have an adopted housing element that the Department of Housing and Community Development has found pursuant to Section 65585 of the Government Code to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code and have submitted to the Department of Housing and Community Development the annual progress report required by Section 65400 of the Government Code within the preceding 12 months.

(G) Transferred funds shall only assist rental units affordable to, and occupied by, households earning 60 percent or less of the area median income.

(H) Transferred funds not encumbered within two years shall be transferred to the Department of Housing and Community Development for expenditure pursuant to the Multifamily Housing Program or the Joe Serna, Jr. Farmworker Housing Grant Program.

(d) Sections 33334.10 and 33334.12 shall not apply. Instead, if a housing successor has an excess surplus, the housing successor shall encumber the excess surplus for the purposes described in paragraph (3) of subdivision (a) or transfer the funds pursuant to paragraph (2) of subdivision (c) within three fiscal years. If the housing successor fails to comply with this subdivision, the housing successor, within 90 days of the end of the third fiscal year, shall transfer any excess surplus to the Department of Housing and Community Development for expenditure pursuant to the Multifamily Housing Program or the Joe Serna, Jr. Farmworker Housing Grant Program. For purposes of this subdivision, “excess surplus” shall mean an unencumbered amount in the account that exceeds the greater of one million dollars (\$1,000,000) or the aggregate amount deposited into the account during the housing successor’s preceding four fiscal years, whichever is greater.

(e) Section 33334.16 shall not apply to interests in real property acquired on or after February 1, 2012. With respect to interests in real property acquired by the former redevelopment agency prior to February 1, 2012, the time periods described in Section 33334.16 shall be deemed to have commenced on the date that the Department of Finance approved the property as a housing asset.

(f) Section 33080.1 of this code and Section 12463.3 of the Government Code shall not apply. Instead, the housing successor shall conduct, and shall provide to its governing body, an independent financial audit of the Low and Moderate Income Housing Asset Fund within six months after the end of each fiscal year, which may be included in the independent financial audit of the host jurisdiction. If the housing successor is a city or county, it shall also include in its report pursuant to Section 65400 of the Government Code and post on its Internet Web site all of the following information for the previous fiscal year. If the housing successor is not a city or county, it shall also provide to its governing body and post on its Internet Web site all of the following information for the previous fiscal year:

(1) The amount deposited to the Low and Moderate Income Housing Asset Fund, distinguishing any amounts deposited for items listed on the Recognized Obligation Payment Schedule from other amounts deposited.

(2) A statement of the balance in the fund as of the close of the fiscal year, distinguishing any amounts held for items listed on the Recognized Obligation Payment Schedule from other amounts.

(3) A description of expenditures from the fund by category, including, but not limited to, expenditures (A) for monitoring and preserving the long-term affordability of units subject to affordability restrictions or covenants entered into by the redevelopment agency or the housing successor and administering the activities described in paragraphs (2) and (3) of subdivision (a), (B) for homeless prevention and rapid rehousing services for the development of housing described in paragraph (2) of subdivision (a), and (C) for the development of housing pursuant to paragraph (3) of subdivision (a).

(4) As described in paragraph (1) of subdivision (a), the statutory value of real property owned by the housing successor, the value of loans and grants receivable, and the sum of these two amounts.

(5) A description of any transfers made pursuant to paragraph (2) of subdivision (c) in the previous fiscal year and, if still unencumbered, in earlier fiscal years and a description of and status update on any project for which transferred funds have been or will be expended if that project has not yet been placed in service.

(6) A description of any project for which the housing successor receives or holds property tax revenue pursuant to the Recognized Obligation Payment Schedule and the status of that project.

(7) For interests in real property acquired by the former redevelopment agency prior to February 1, 2012, a status update on compliance with Section 33334.16. For interests in real property acquired on or after February 1, 2012, a status update on the project.

(8) A description of any outstanding obligations pursuant to Section 33413 that remained to transfer to the housing successor on February 1, 2012, of the housing successor's progress in meeting those obligations, and of the housing successor's plans to meet unmet obligations. In addition, the housing successor shall include in the report posted on its Internet Web site the implementation plans of the former redevelopment agency.

(9) The information required by subparagraph (B) of paragraph (3) of subdivision (a).

(10) The percentage of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period.

(11) The amount of any excess surplus, the amount of time that the successor agency has had excess surplus, and the housing successor's plan for eliminating the excess surplus.

Approved _____, 2013

Governor